Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1980

No. 79-1924

THE INDEPENDENT ORDER OF FORESTERS, a fraternal benefit society,

Petitioner,

vs.

EVELYN BIER, *et al.*,

Respondents.

Petition for Writ of Certiorari to the Superior Court of the State of California for the County of Los Angeles.

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IN THE

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October Term, 1980

No. ————

THE INDEPENDENT ORDER OF FORESTERS, a fraternal benefit society,

Petitioner,

vs.

EVELYN BIER, *et al.*,

Respondents.

Petition for Writ of Certiorari to the Superior Court of the State of California for the County of Los Angeles.

Petitioner The Independent Order of Foresters (the "IOF"), a fraternal benefit society, respectfully prays that a Writ of Certiorari issue to the Superior Court of the State of California for the County of Los Angeles ("Los Angeles Superior Court") to review that Court's order allowing the filing of a Complaint in Intervention by respondents Evelyn Bier, Oscar Garcia, Boyce Garrett, Bernice Garrett, Douglas Halcolm, Vicki Langston, Teri-Lue Mayer, Dave Rubanowitz, Maury Shapiro, and Rosyln S. Shapiro, on behalf of former San Fernando Valley Court 619 of the IOF. If this Petition is denied, the IOF will be forced to relitigate in the Los Angeles Superior Court issues which were de-

cided or could have been decided in a prior action before the United States District Court for the Central District of California (the "U.S. District Court").

Opinions Below.

The April 10, 1980 order of the Supreme Court of the State of California, summarily denying the IOF's Petition for Hearing, was not reported in any official California Reports and is set forth in Appendix A.

The March 12, 1980 order of the Court of Appeal of the State of California, Second Appellate District, summarily denying the IOF's Petition for Writ of Mandate, or, in the Alternative, for Writ of Prohibition, was not published in any official California Reports and is set forth in Appendix B.

The February 11, 1980 minute order of the Los Angeles Superior Court, which denied the IOF's Motion for Reconsideration, was not reported in any official California Reports and is set forth in Appendix C.

The October 24, 1979 minute order of the Los Angeles Superior Court, which granted respondent's Motion for Leave to Intervene in this action, was not reported in any official California Reports and is set forth in Appendix D.

Jurisdiction.

The minute order of the Los Angeles Superior Court, granting respondent's Motion for Leave to Intervene in this action, was entered on October 24, 1979. The Los Angeles Superior Court denied the IOF's timely Motion for Reconsideration on February 11, 1980. The Court of Appeal denied the IOF's Petition for Writ of Mandate, or, in the Alternative, for Writ of Prohibition, on March 12, 1980. On April 10, 1980, the Supreme Court of California denied the IOF's Petition for Hearing. This Petition for Writ of

Certiorari was filed less than ninety (90) days thereafter. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

The federal issue which is the subject of this Petition has been finally decided in the California courts. Reversal of the Los Angeles Superior Court on the federal issue would be preclusive of any further litigation on the relevant cause of action. In addition, a delay in review of the state court decision would seriously erode the federal requirement that full faith and credit be given to judgments of federal courts and the corollary federal policy regarding judicial economy. The minute order of the Los Angeles Superior Court thus constitutes a "final judgment" for purposes of 28 U.S.C. Section 1257(3). *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482-483 (1975).

This Court's review by certiorari is sought on the ground that the Los Angeles Superior Court has denied full faith and credit to the judgment of dismissal entered by the U.S. District Court in a prior action by allowing the filing of a Complaint in Intervention which seeks to relitigate issues finally determined by the U.S. District Court.

Question Presented.

When a federal court in a diversity case renders a judgment based on the law of the state in which it sits and a court of that state thereafter fails to give the same res judicata and collateral estoppel effect to the federal court judgment that the judgment would have if rendered by another court of that state, has the state court failed to give full faith and credit to the judgment of the federal court as required by 28 U.S.C. Section 1738?

Federal Statute Involved.

28 United States Code Section 1738:

"...

"The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such Acts, Records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

Statement of the Case.

The IOF is a fraternal benefit society, as defined in Section 10970 *et seq.* of the California Insurance Code. The IOF was organized by Act of Parliament and exists under the provisions of the Canadian and British Insurance Company Acts of Canada. The IOF is qualified to do business and is doing business as a fraternal benefit society in the State of California. Its members enjoy fraternal and social activities by participating in local lodges called "courts," and they are also provided with insurance coverage by the IOF.

This action arises from the suspension and eventual revocation of the charter of one of the subordinate courts of the IOF, former Court 619. The initial decision to suspend the charter of former Court 619 was made by one of the regional governing bodies of the IOF, the High Standing Committee of the High Court of California South. Certain

members of former Court 619 appealed that decision to the Supreme Chief Ranger of the IOF and then to the Executive Council of the IOF pursuant to Sections 262(7) and 262(9) of the Constitution and Laws of the IOF (the "IOF Constitution") and the suspension was upheld. However, members of former Court 619 failed to exhaust their ultimate appellate remedy within the IOF in that they did not appeal to the Supreme Court of the IOF within the time provided by Section 263 of the IOF Constitution.

The IOF commenced the present action on June 30, 1976 with the filing of its Complaint for Preliminary and Permanent Injunction, Claim and Delivery, and Accounting. On July 28, 1976, the Los Angeles Superior Court granted the IOF's request for a preliminary injunction, which is currently in effect.

On January 12, 1977, purported representatives of former Court 619 filed an action in the Los Angeles Superior Court, Case No. C 186309, seeking reinstatement of former Court 619 as a fully privileged participating court of the IOF, an accounting of funds and one million dollars in damages. It was alleged that two of the four named representatives were officers of former Court 619 at the time of its suspension.

The IOF removed the action to the U.S. District Court and moved to dismiss the action on the ground that the members of former Court 619 had failed to exhaust their internal remedies by appealing to the Supreme Court of the IOF within the time provided. The Honorable William Matthew Byrne, Jr., United States District Judge, granted the IOF's Motion to Dismiss and dismissal was entered on August 16, 1977. (Appendix E to this Petition.) No appeal was taken from the judgment entered by the U.S. District Court, and the time in which such an appeal could be taken has long since expired.

Thereafter, on August 20, 1979, respondents, again purported representatives of former Court 619, filed a Motion for Leave to Intervene in this action. At the same time, respondents also filed their voluminous proposed 45-page Complaint in Intervention and Petition for Writ of Mandate for Reinstatement, Accounting and Claim and Delivery (Exhibit F to the IOF's Petition for Writ of Mandate/Prohibition lodged with the California Court of Appeal, Second Appellate District).

The IOF opposed respondents' Motion for Leave to Intervene in this action on the ground that the issues and claims presented by the proposed Complaint in Intervention had already been finally determined or could have been determined in the federal action before Judge Byrne and that respondents were barred by the principles of res judicata and collateral estoppel from relitigating these same issues. In that regard, it was pointed out that the Complaint which the IOF removed to the U.S. District Court sought:

a) *Reinstatement of former Court 619* as a fully privileged, participating court of the IOF;

b) Reinstatement of all suspended or expelled members of former Court 619;

c) A surrender of assets of former Court 619;

d) An accounting of funds; and

e) Damages of $1 million.

In comparison, the voluminous Complaint in Intervention which respondents filed in this action seeks:

a) *Reinstatement of former Court 619* as a subordinate court in good standing of the IOF and an injunction, enjoining the IOF from treating former Court 619 as anything other than a local member court in good standing;

b) An order compelling transfer of IOF members who reside within the jurisdictional boundaries of former Court 619 to the reinstated Court 619;

c) Claim and delivery of all property belonging to former Court 619 and appointment of a receiver to manage the property and funds of former Court 619;

d) An accounting of membership dues; and

e) Compensatory damages in an unspecified amount, attorneys' fees and punitive damages of $30 million.

All of the above claims in both actions stem from one alleged injury—the suspension and eventual revocation of former Court 619's charter by the IOF. The only distinctions between the two actions are a broadening of the form of relief sought in the Complaint in Intervention filed in this action to include a prayer for an injunction and appointment of a receiver and an increase in the dollar amounts of damages sought.

On October 24, 1979, the Los Angeles Superior Court granted respondents' Motion for Leave to Intervene in this action. The Honorable Robert Fainer's minute order stated:

> ". . . [I]t is clear that [the] 'administrative remedy problem' is a bar to petitioners' request to intervene as to the issue of the suspension applying the doctrine of collateral estoppel. There is, however, no prior determination by the federal court as to the right of petitioners to intervene on the issue of reinstatement."
>
> (Appendix D to this Petition).

The IOF filed a Motion for Reconsideration of the minute order permitting intervention. In its motion, the IOF argued that while Judge Fainer correctly ruled that respondents are in privity with the U.S. District Court plaintiffs and that the

doctrine of collateral estoppel applies to the Complaint in Intervention insofar as the issue of "suspension" is concerned, he incorrectly ruled that the issue of "reinstatement" was not barred by res judicata or collateral estoppel.

Judge Fainer agreed to reconsider his earlier ruling on the merits, and on February 11, 1980 he reaffirmed his prior order allowing the proposed Complaint in Intervention to be filed. (Appendix C to this Petition.)

The IOF then sought an extraordinary writ from the California Court of Appeal. In its petition for the writ, the IOF contended that the Los Angeles Superior Court, by allowing the filing of the proposed Complaint in Intervention, had denied full faith and credit to the judgment entered by the U.S. District Court. On March 12, 1980 the California Court of Appeal summarily denied the IOF's petition. (Appendix B to this Petition.)

The IOF again raised the issue of full faith and credit in its Petition for Hearing to the California Supreme Court. An order, summarily denying the IOF's Petition for Hearing, was entered by the California Supreme Court on April 10, 1980. (Appendix A to this Petition.)

STATEMENT OF REASONS FOR GRANTING THE WRIT OF CERTIORARI.

1. This Is a Case of First Impression.

The law has long been settled that judgments of federal courts are on an equal footing with judgments of state courts and are entitled to the same full faith and credit, 28 U.S.C. Section 1738; *Embry v. Palmer*, 107 U.S. 3, 9-10 (1882); *Turnbull v. Payson*, 95 U.S. 418, 423 (1877).

In *Stoll v. Gottlieb*, 305 U.S. 165, 177 (1938), this Court held that the courts of Illinois were required to give res judicata effect to the decree of a federal bankruptcy court sitting in Illinois.

However, the federal court judgment in *Stoll v. Gottlieb, supra*, was based on rights arising under federal law. The IOF is unaware of any decision of this Court which holds that a state court must, under 28 U.S.C. Section 1738, give the same res judicata effect to a judgment of a federal court sitting in that state and properly exercising diversity jurisdiction, as the state court would give to a judgment rendered by a court of that state.

The IOF respectfully submits that the Los Angeles Superior Court was required, under 28 U.S.C. Section 1738, to give conclusive effect to the prior judgment of the U.S. District Court.

2. Under California Law, the Complaint in Intervention Would Be Barred by the Doctrines of Res Judicata and Collateral Estoppel if the U.S. District Court Judgment Had Been Rendered by a California Court.

Under California law, a final judgment on the merits between parties who are in privity operates as a bar to a subsequent action upon the same cause of action, settling

not only every issue that was raised, but also every issue that *might have been raised* in the first action. *Slater v. Blackwood*, 15 Cal.3d 791, 795 (1975).

(a) The U.S. District Court Judgment Was a Final Judgment on the Merits.

The first action, filed by the members of former Court 619 on January 12, 1977, sought reinstatement of former Court 619 as a fully privileged, participating court of the IOF, an accounting of funds and $1 million in damages.

The IOF properly removed the action to the U.S. District Court. All of the requirements of 28 U.S.C. Section 1332 were met: (1) plaintiffs were residents of the State of California and the IOF was a nonresident corporation doing business in California; and (2) the amount in controversy exceeded $10,000. Thus the U.S. District Court had subject matter jurisdiction of the controversy. The action was dismissed because the plaintiffs were barred from suing in *any* court, state or federal, due to their failure to exhaust their internal administrative remedies.

If the plaintiffs as representatives of former Court 619 had any claims against the IOF which were not barred by their failure to exhaust administrative remedies, these claims could have been asserted under Rule 18 of the Federal Rules of Civil Procedure. The U.S. District Court, exercising its diversity jurisdiction, could have decided all issues which might have been raised in the state court. *Angel v. Bullington*, 330 U.S. 183, 191 (1947).

The U.S. District Court, sitting in diversity, was bound by California law in determining whether the original representatives of former Court 619 were barred as a matter of law from instituting a legal action against the IOF. *Guaranty Trust Co. of New York v. York*, 326 U.S. 99, 110

(1945); *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

The California Supreme Court has recognized that a dismissal may constitute an actual determination on the merits where the court determines that plaintiffs are barred as a matter of law from any recovery. *Olwell v. Hopkins*, 28 Cal.2d 147 (1946).

In *Holderby v. Internat. Union etc. Engrs.*, 45 Cal.2d 843, 846 (1955), the California Supreme Court stated the rule regarding exhaustion of administrative remedies in the context of an action for reinstatement in a labor union:

> "It is the general and well established jurisdictional rule that a plaintiff who seeks judicial relief against an organization of which he is a member must first invoke and exhaust the remedies provided by that organization applicable to his grievance."

The rule was specifically applied to an action by a member of a subordinate lodge of a fraternal benefit society in *Berlin v. Eureka Lodge No. 9, K. of P.*, 132 Cal. 294, 296 (1901). There, the California Supreme Court held that a member must exhaust all the remedies provided by the society's laws for the redress of his grievance before he may resort to a court of law.

Under California law, the exhaustion of remedies doctrine applies equally to actions for reinstatement to membership in a private association and actions seeking damages for an allegedly wrongful termination of membership. *Westlake Community Hosp. v. Superior Court*, 17 Cal.3d 465, 476-477 (1976).

Thus, the failure to exhaust remedies is not a mere technicality which can be cured with the passage of time. The failure of the members of former Court 619 to exhaust their administrative remedies forever cuts off their right to sue

on this cause of action because the time within which they could have exhausted their remedies within the IOF has long since expired. The dismissal of the U.S. District Court therefore operates as a judgment on the merits. Since no appeal was taken from the judgment, and the time to appeal has expired, the judgment is final. *Olwell v. Hopkins, supra,* 28 Cal.2d at 152.

(b) Privity of Parties Is Not an Issue.

By holding that respondents were collaterally estopped from relitigating the issue of the "suspension" of former Court 619 (Appendix D to this Petition), the Los Angeles Superior Court in the present action necessarily found that respondents were in privity with the plaintiffs in the prior U.S. District Court action. *See, e.g., Clemmer v. Hartford Insurance Co.,* 22 Cal.3d 865, 874 (1978).

Thus, privity of parties is not an issue in connection with this Petition.

3. By Permitting the Filing of the Complaint in Intervention, the Los Angeles Superior Court Violated 28 U.S.C. Section 1738.

The claims for relief presented in the U.S. District Court action and the present Complaint in Intervention all stem from one alleged injury—the suspension of former Court 619's charter by the IOF. Thus, both the U.S. District Court action and the Complaint in Intervention are founded on the same cause of action. Since respondents are in privity with the plaintiffs in the District Court action, under California law they are barred by the principles of res judicata and collateral estoppel from relitigating the issues which were or could have been litigated in the U.S. District Court action. Despite this basic rule of law, the Los Angeles Superior Court has permitted the filing of the Complaint in Inter-

vention. This action denied full faith and credit to the U.S. District Court judgment by not giving that judgment the res judicata or collateral estoppel effect it would have been afforded if rendered by a California court.

Conclusion.

Having had their day in court and having lost, respondents are attempting to circumvent the consequences of this loss by relitigating the same case in a different court before a different judge. The policy behind the doctrine of full faith and credit, as enunciated by 28 U.S.C. 1738, is to prevent such an abuse of the judicial system.

Judicial economy is not served by allowing litigants to bounce back and forth between state and federal courts. In particular, federal courts should not become a testing ground for frivolous claims, with the claimant knowing he can refile in state court should his federal action be dismissed.

Finally, the policies behind removal jurrisdiction will be frustrated if a nonresident defendant such as the IOF can win in federal court, only to find itself subsequently relitigating the same issues in state court.

For the above reasons, the IOF respectfully requests that this Court grant the requested Petition for Writ of Certiorari.

Respectfully submitted,

ADAMS, DUQUE & HAZELTINE,
CHARLES GRIFFIN CALE,
Attorneys for Petitioner, The Independent Order of Foresters.

Of Counsel:

LOYD P. DERBY,
MARGARET LEVY.

APPENDIX A.

Clerk's Notice Re Denial of the IOF's Petition for Hearing.

Supreme Court of the State of California

2/CV. 58691

The Independent Order of Foresters, v. Superior Court, L.A. County, Bier, et al, Rpi's.

I have this day filed Order ..... Hearing Denied.

Dated: April 10, 1980.

Respectfully,

G. E. Bishel,
Clerk.

APPENDIX B.

Order Re Petition for Writ of Mandate, or, in the Alternative, for Writ of Prohibition.

Court of Appeal of the State of California, Second Appellate District, Division Three.

2nd Civil No. 58691

The Independent Order of Foresters, a fraternal benefit society, Petitioner, v. Superior Court of the State of California for the County of Los Angeles, Respondent, Evelyn Bier, et al., Real Parties in Interest.

THE COURT:

The petition for writ of mandate/prohibition, filed herein on February 27, 1980, has been read and considered. The petition is denied for failure to state facts sufficient to justify the relief sought.

COURT OF APPEAL-SECOND DIST.
FILED
MARCH 12, 1980
CLAY ROBBINS, JR. Clerk

APPENDIX C.

Order Denying the IOF's Motion for Reconsideration.

Superior Court of the State of California
for the County of Los Angeles

No. C 165 965

The Independent Order of Foresters,
v. Rene Charbonneau, et al.

Motion comes on for hearing and is orally argued.

Matter is submitted.

LATER — The court reconsiders its order of Oct. 24, 1979, and after a review of moving and opposition papers and matters raised in oral argument now reaffirms its said order permitting the complaint-in-intervention to be filed. In doing so, the court notes that injunctive sought in the complaint-in-intervention (filed Nov. 2, 1979) seeks relief contrary to the preliminary injunction now in effect. The court sees no problem with the intervenors seeking permanent injunctive relief contrary to an existing preliminary injunction.

Intervenor to give notice.

Minutes entered February 11, 1980.

County Clerk.

APPENDIX D.

Order Granting Respondents' Motion for Leave to Intervene in Pending Action.

Superior Court of the State of California
for the County of Los Angeles
No. C 165 965
The Independent Order of Forester
v. Rene Charbonneau, et al.

Matter argued and taken under submission. Later, the Court renders the following decision:

1. Motion is granted.

(a) In taking judicial notice of Judge Byrne's decision in the federal case of U.S. District Court (Central California) #770210 WMB, it is clear that "administrative remedy problem" is a bar to petitioners' request to intervene as to the issue of the suspension applying the doctrine of collateral estoppel. There is, however, no prior determination by the federal court as to the right of petitioners to intervene on the issue of reinstatement.

(b) The state trial court must make a determination as to whether further administrative remedies are futile for intervenors, whether there is bad faith or whether there is an estoppel or waiver. This must be done by this court in a fact determination proceeding, to wit, a trial or, possibly, a summary judgment motion. The court cannot make this determination in this motion to intervene or on any challenge to the pleadings by a demurrer or motion to strike.

2. Petitioners are to file and serve (by mail) their complaint-in-intervention within thirty days after date of ruling. Petitioners are to give notice.

Minutes entered October 24, 1979.

County Clerk.

APPENDIX E.

Order Dismissing Action for Lack of Subject Matter Jurisdiction.

United States District Court
Central District of California
No. CV 77-210-WMB

Rene Charbonneau, John Croyt, Dan Schlick, and Glenn Marshall, Representing All of Court 619, San Fernando Valley, of The Independent Order of Foresters, Plaintiffs, v. The Independent Order of Foresters, a Fraternal Society, and Does I through III, inclusive, Defendant.

Defendant Independent Order of Foresters (IOF) filed a motion to dismiss pursuant to Rules 12(b)(1) and 12 (b)(6), Federal Rules of Civil Procedure, for lack of subject-matter jurisdiction and for failure to state a claim under which relief could be granted. At the hearing on this matter, the parties stipulated that the questions of whether plaintiffs were required to exhaust internal administrative procedures of IOF before bringing this action, and if so, whether those procedures had been exhausted or whether plaintiffs were excused from exhausting them, were to be decided based on the materials filed with the court and presented at the hearing, and neither side desired to submit additional documents or evidence.

The court finds that the plaintiffs failed to exhaust the internal appellate review procedures provided to them in the IOF Constitution and are not excused from such failure.

Plaintiffs are four individuals who have been suspended from membership in the defendant organization. Pursuant to the procedures for appeal set forth in the IOF Constitution, plaintiffs took timely successive appeals to the prescribed review bodies until they reached the penultimate IOF appellate authority, the Executive Council. The Executive

Council's decision upheld plaintiffs' suspension from IOF. Under Section 263(1) of the IOF Constitution, plaintiffs had twenty days, to file an appeal to the ultimate appellate body, the Supreme Court. No appeal to the Supreme Court was filed. Section 260(3) of the IOF Constitution provides that "Any aggrieved party failing to take an appeal from any action or decision in the manner and within the time laid down in the Constitution and laws shall be bound by such action or decision and shall have no further recourse whether in law or in equity, in respect of the subject matter of such action or decision."

Plaintiffs urge that they are excused from their obligation to exhaust the internal appellate review procedure because an appeal to the Supreme Court would have been a useless administrative act. Plaintiffs rely on Section 40(1) of the IOF Constitution, which provides that the Executive Council "shall during the recess of the Supreme Court exercise all the rights, powers and privileges of the Supreme Court . . . as fully and effectually as the same might be done by the Supreme Court in session." Plaintiffs argue that inasmuch as the Supreme Court was in recess, the Executive Council, which had already ruled against them, would have invoked this provision and have summarily affirmed its earlier decision.

Even assuming that the Executive Council would have exercised its rights under Section 40(1), the plaintiffs have not shown that the Executive Council would have failed to reconsider in good faith all grounds for appeal. More significantly, there is no reason to assume that the matter would not have been deferred until the Supreme Court's next regular session, or that the Supreme Court would not be called into special session, pursuant to the procedures set forth in Section 10 of the IOF Constitution. To assume that an appeal to the Supreme Court would have been useless is unwar-

ranted speculation. Thus, plaintiffs have failed to bring their case in line with those that excuse useless additional administrative appeals before commencement of legal action. *See, e.g., Ogo Associates v. City of Torrance*, 37 Cal.App.3d 830, 834, 112 Cal.Rptr. 761, 763 (1974).

As a result, this action is untimely and no subject matter jurisdiction exists. *Western International Hotels v. Tahoe Regional Planning Agency*, 387 F.Supp. 429, 433 (D. Nev. 1975); *Messling v. Finch*, 322 F.Supp. 1279 (D. Pa. 1971); *Ricciotti v. Warwick School Committee*, 319 F.Supp. 1006, 1011-12 (D.R.I. 1970). Accordingly,

IT IS HEREBY ORDERED that the motion to dismiss for lack of subject-matter jurisdiction of the defendant Independent Order of Foresters is granted.

DATED: August 8, 1977.

Wm. Matthew Byrne, Jr.
United States District Judge.